



ENTERED
07/01/2019

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: WESTMORELAND COAL COMPANY, <i>et al.</i> ¹ Debtors.	§ § § § § § §	Chapter 11 Case No. 18-35672 (DRJ) (Jointly Administered)
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**STIPULATION AND AGREED ORDER RESOLVING DEBTORS’ OBJECTIONS TO
PROOFS OF CLAIM FILED BY GT NIX CONSTRUCTION, INC.
(Docket No. 2038)**

The WLB Debtors² and the WMLP Debtors³ (collectively, with the WLB Debtors, the “Debtors”) in the above-captioned cases and GT Nix Construction, Inc. (“Creditor,” and together with the Debtors, the “Parties”) hereby enter into this stipulation and order (this “Stipulation and Agreed Order”) as follows:

WHEREAS, on October 9, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [ECF No. 71];

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company's service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² “WLB Debtors” means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP (“WMLP”), and WMLP’s subsidiaries (collectively with WMLP, the “WMLP Debtors”).

³ Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

WHEREAS, on October 18, 2018, the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to § 1102 of the Bankruptcy Code (the “Committee”) [ECF No. 206];

WHEREAS, the Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

WHEREAS, on March 2, 2019, the Bankruptcy Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “WLB Confirmation Order”) [ECF No. 1561] confirming WLB Debtors’ plan of reorganization (the “WLB Plan”);

WHEREAS, on March 15, 2019, the effective date of the WLB Plan occurred (the “Effective Date”) [ECF No. 1608];

WHEREAS, on June 5, 2019, the Bankruptcy Court entered the *Order Approving Disclosure Statement and Confirming Amended Joint Plan of Liquidation for the WMLP Debtors, As Modified* (the “WMLP Confirmation Order”) [ECF No. 1967], confirming the WMLP Debtors’ plan of liquidation (the “WMLP Plan”);

WHEREAS, Creditor filed the following Proofs of Claim:

- (a) Claim No. 217 filed in Case No. 18-35672 (DRC Claim No. 495) (“Claim No. 495”);
- (b) Claim No. 289 filed in Case No. 18-35672 (DRC Claim No. 674) (“Claim No. 674”);
- (c) Claim No. 532 filed in Case No. 18-35672 (DRC Claim No. 1324) (“Claim No. 1324”);

(d) Claim No. 8 filed in Case No. 18-35695 (DRC Claim No. 1328) (“Claim No. 1328”); and

(e) Claim No. 77 filed in Case No. 18-35696 (DRC Claim No. 1329) (“Claim No. 1329,” and, together with Claim No. 495, Claim No. 674, Claim No. 1324, and Claim No. 1328).

WHEREAS, the Debtors filed the *Debtors’ Second Omnibus Objection to Certain Proofs of Claim (Exact Duplicate Claims)* [ECF No. 1785] (the “Second Omnibus Objection”) whereby the Debtors requested that the court disallow and expunge Claim No. 674 because it is an exact duplicate of Claim No. 495;

WHEREAS, the Debtors filed the *Debtors’ Fourteenth Omnibus Objection to Certain Proofs of Claim (Amended Claims and Cross Debtor Duplicate Claims)* [ECF No. 1797] (the “Third Omnibus Objection”) whereby the Debtors requested that the court disallow and expunge Claim No. 495 because was amended and replaced by Claim No. 1329 and further requested that the Court disallow and expunge Claim No. 1324 and Claim No. 1328 because they are exact duplicates of Claim No. 1329;

WHEREAS, the Debtors filed the *WMLP Debtors’ Objection to Proof of Claim No. 77-1 Filed in Case No. 18-35696 Filed by GT Nix Construction, Inc.* [ECF No. 1822] (the “GT Nix Objection,” and together with the Second Omnibus Objection and Third Omnibus Objection, the “Objections”) whereby the Debtors requested that the Court reclassify Claim No. 1329 from a secured claim to a general unsecured claim; and

WHEREAS, the Debtors and Creditor have agreed to resolve the Objections, as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Stipulation and Agreed Order, the Parties hereby stipulate and agree as follows:

1. Creditor hereby withdraws Claim No. 495, Claim No. 674, and Claim No. 1324.
2. The Parties agree that Claim No. 1328 is hereby reclassified as a general unsecured claim against Debtor Westmoreland Kemmerer Fee Coal Holdings, LLC (Case No. 18-35695).
3. The Parties agree that Claim No. 1329 is hereby reclassified as a general unsecured claim against Debtor Westmoreland Kemmerer, LLC (Case No. 16-35696).
4. The Creditor hereby agrees that it shall, within seven (7) days of entry of this Stipulation and Agreed Order on the docket in this Bankruptcy Case, take any and all actions necessary to effectuate the release, discharge, or other removal of all liens it asserted, filed, or otherwise claimed, with respect to the Claims, at its sole cost and expense.
5. The Clerk of the Court is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Stipulation and Agreed Order.
6. This Stipulation and Agreed Order is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Debtors to object to Claim No. 1328 and Claim No. 1329 on any other ground whatsoever. The Debtors expressly reserve all further substantive or procedural objections.
7. Except as otherwise provided herein, nothing in this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor entity; (b) a waiver of any Party's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim;

(d) an implication or admission that any particular claim is of a type specified or defined herein;

(e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

8. Neither this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order.

9. The terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon entry by the Bankruptcy Court.

10. This Stipulation and Agreed Order is intended by the Parties to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives, and any parent, subsidiary, or affiliated entity of the Parties.

11. The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective parties and that the respective parties have full knowledge of, and have consented to, this Stipulation and Agreed Order.

12. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

13. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

14. This Stipulation and Agreed Order shall not be modified, altered, amended or supplemented except by a writing executed by the Parties or their authorized representatives.

15. The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation and Order.

IT IS SO ORDERED.

Signed: July 01, 2019.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

IN WITNESS WHEREOF, the Parties, by their authorized counsel, executed this Stipulation and Agreed Order as of the date written below.

Dated: June 12, 2019

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Dated: June 12, 2019

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